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INFO RUCNIAD/IGAD COLLECTIVE
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UNCLAS SECTION 01 OF 04 ADDIS ABABA 002143

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SUBJECT: ETHIOPIA'S JUDICIAL SYSTEM: IN TRANSITION

REF: ADDIS ABABA 2116

Summary

1. (SBU) This cable provides a brief overview of Ethiopia's judicial system, based on contacts with legal practitioners. Ethiopia has both a regional (state) and a federal court system. The federal system handles matters of federal law and has benefited from external assistance, primarily from Canada, focusing on judicial administration and information technology and designed to boost the efficiency of process. Corruption is not a significant concern, but judicial independence remains at issue as there is no judicial review and constitutional interpretation remains with the ruling-party dominated parliament, which is also responsible for judicial appointments. Access to judicial mechanisms is gradually increasing but is still difficult for Ethiopia, due to chronic underdevelopment. Ethiopia's legal practitioners underscore that Ethiopia is committed to professionalizing the judiciary and the United States Mission will continue to work with the American Bar Association, Ethiopia's law schools and implementing partners toward that end. End Summary.

2. (SBU) To get a portrait of Ethiopia's judicial system, Emboffs interviewed the Vice President of the Federal Supreme Court and judges from the Federal High Court and Federal Court of First Instance, members of the Ethiopian Bar Association, faculty at Addis Ababa University Law School, and a staff member at the Ethiopian Ministry of Justice. Emboffs also spoke with contacts at the American Bar Association office in Addis Ababa (whose activities are currently suspended due to uncertainty over the pending civil society law's effects on its programs) and the Canadian Embassy.

Judicial Heritage and Structure

3. (SBU) The Ethiopian judiciary is "still in transition," according to Ethiopian Bar Association (EBA) members, who added that three governments in 34 years have imposed steep costs on the administration of justice. "Changing governments without elections," an EBA member said, "is expensive. It disrupts priorities and directions. We have had three distinct economic and political philosophies in three governments. With completely different people in office, institutional knowledge and manpower has been squandered and

there has been no relay of ideas and capacity from generation to generation. Nothing has been inherited from previous regimes." EBA members said the 1994 federal constitution did improve on the Dergue-era constitution in a number of areas, but that application of law remains unpredictable due to a young, inexperienced judiciary and the relative newness of the current legal regime. Ethiopia practices a "hybrid" system of law, based largely on the French code and other continental influences, but with elements of common law practice, particularly in procedural matters. There are no juries and in most instances in federal court three judge panels hear cases.

14. (SBU) As a federal system, Ethiopia has both federal and regional (state) courts. In ascending order, woreda, zonal and regional (state) courts comprise the regional (state) system. The state system hears matters under state law, although decisions at the State Court are appealable to the Federal Supreme Court. The federal courts are composed of, in ascending order, the Court of First Instance, the High Court and the Supreme Court. Federal courts have jurisdiction over matters of federal law. Most federal benches are located in Addis Ababa, although the following regions have Federal High Court benches: Somali, Beneshanghul, Afar, Gambella, and Southern Nations, Nationalities and Peoples (SNNP). In regions without federal benches, zonal courts handle federal matters. Most larger regions, such as Oromiya and Amhara, do not have federal benches because their state court systems are presumed to have the capacity to handle delegated authority. In both systems, the courts hear both civil and criminal cases.

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There are some special administrative courts as well, and some social (or traditional) courts at the kebele (village) level. Sharia courts are permitted for family/inheritance matters, but individuals theoretically have the right to opt out. In such cases, disputes are resolved through the federal courts. The relationship between the formal courts and more traditional dispute resolution mechanisms is still to be defined. Jurisprudence is underdeveloped in key emerging areas, such as anti-trust law, and there is no system for reporting cases (other than from the Federal Supreme Court's Cassation Bench). Access to judicial mechanisms is gradually increasing but is still difficult for Ethiopians given the country's chronic underdevelopment and poor educational system. Many impoverished Ethiopians know little about their legal rights nor can they afford to pursue them within the courts.

The Lower Federal Courts

15. (SBU) The Federal Court of First Instance has jurisdiction in civil cases for matters below 500,000 birr (approximately USD 50,000). The Federal High Court hears civil cases in excess of 500,000 birr and serious criminal offenses (including, according to a High Court judge, murder, counterfeiting and crimes against the Ethiopian Constitution). The Federal High Court has 48 judges, drawn from all regions of the country: 10 Amhara, 9 Oromo, 7 Tigray, 5 Gurage, 2 Harar, 2 Agoa (Amhara), 2 Afar, 2 Kambetta, 1 Somali, 1 Berta, 1 Gamo, 1 Tambaro, 1 Benji, plus four recent hires (background unknown). The court makes an effort to reflect Ethiopia's diversity but does not expressly balance ethnicities/origins with population, as demonstrated by the relative dearth of Oromos, by far Ethiopia's largest ethnic group.

16. (SBU) Progress is being made on judicial administration. The current backlog of cases pending has been reduced to 6,500 from 15,000 three years ago. More than 75 percent of cases are adjudicated fully within one year. Transcription machines and case management software and databases have contributed greatly to more efficient administration, provided with the assistance of the Canadian government. In

addition, prior to 2005 three judge panels were required for all criminal cases; now, a single judge can rule on criminal cases subject to penalties of less than 15 years. However, as efficiency of judicial administration has increased, so too have caseloads, due, according to several interlocutors, to greater assertiveness by potential claimants and greater awareness of legal rights by the Ethiopian population.

The Federal Supreme Court

17. (SBU) The Supreme Court has 21 judges who serve in two divisions, Cassation (jurisdiction limited to fundamental errors of law) and Appellate (jurisdiction over both questions of fact and of law). The Cassation Bench convenes a three judge panel to determine if there has been a "fundamental error of law." If so, five judges will be paneled to the case. The Appellate Division convenes three judges both to screen and hear cases. Case management is efficient, with only 2078 cases pending and an average duration for each case only 4.27 months. Supreme Court judges are paid as much as 9,000 birr per month, and receive 2,000 birr and 450 birr in non-taxable housing and transport allowances respectively. About 30 percent of cases are inheritance-related, due to administrative inefficiencies throughout Ethiopia (such as the absence of any mechanism to register births). In 2006, the Cassation Bench introduced stare decisis (essentially, precedent-based law) and now publishes its decisions and distributes them to federal judges.

Judicial Capacity

18. (SBU) Federal judges cited the effective administration of justice as their primary focus (and challenge), particularly in criminal cases, where investigative capacity

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is weak and can adversely affect the whole process. As noted above, the members of the federal bench are also relatively inexperienced. Anyone over 25 can be a federal judge, and for many at the Court of First Instance, where the average age is 30-32, their judgeship is their first job. The average age for Federal High Court judges is 35. Legal practitioners trained under the Emperor or Dergue regimes lament this relative inexperience on the bench, but members of the federal judiciary defended the system's hiring practices by arguing that the current legal regime is less than twenty years old (so there has been a need to train a new generation of lawyers and judges) and that Ethiopia's youth movement is not out of the norm for many Continental law-based countries. "For some time we will rely on new graduates as a practical matter, because Ethiopia simply does not have many experienced legal professionals," the Supreme Court Acting President said. Attrition for judges is high as many jump to private practice, although a recent bump in federal judges' salaries has produced higher retention. Federal courts require law school diplomas. Most regional court systems are also raising their education requirements for the bench, with the exception of Gambella. A training institute for judges and prosecutors has been established for four regions: Addis Ababa, Oromiya, Amhara and Southern Nations, Nationalities and Peoples (SNNP).

19. (SBU) An Addis Ababa Law School (AAU Law) contact told us that graduating classes at AAU comprise approximately 120 students, up from 50-60 a decade ago. With private schools in Addis, Ethiopia graduates approximately 1500 law students per year, our contact said, adding that he believes the economy can absorb the recent graduates. The EBA, however, has only approximately 450 members, and EBA contacts told us only Ethiopia only has 800-900 licensed trial attorneys, relatively low numbers for a country with a population of roughly 80-90 million. The law school now has fifty percent female students, although there are still very few female

judges. The Ministry of Education places students from AAU in the law school and the process is not transparent. Though AAU Law is 40 years old, the alumni association has only been around for the past eight years. AAU Law has 25 teachers, plus 7-8 retired judges who work part time. Only two AAU Law faculty members are women.

Judicial Independence

¶10. (SBU) Judicial practitioners interviewed painted a mixed picture on judicial independence. Judges said that they decide cases in accordance with law and are not subject to interference by the executive branch of the government. The Federal High Court judge who presided over the post-2005 trial of leading opposition figures was particularly adamant that he did not face any government pressure in deciding the case. However, EBA members contend that "legal practice is totally dominated by Ethiopia's Executive branch" and point out that Ethiopia has no judicial review. "The Courts," as one put it, "are not the guarantors of the Constitution, the highest law of the land." In fact, the House of Federation, the second house of parliament, has the sole authority to interpret constitutional issues. The 108 members are appointed by the EPRDF-dominated regional governments. What constitutes a "constitutional issue" is still undefined, our interlocutors underscored, thereby giving the government broad authority to intervene on even petty matters "in defense of the constitution." Finally, in absence of a grand jury system, the judiciary has often served in recent years as a proxy of the Executive branch because those charged can be detained throughout the prosecution phase of a trial, and only after the prosecution rests does anyone consider if the prosecution (led by the MOJ) presented an adequate case to justify continuation of the trial to the defense phase. If not, the court can, sometimes after a number of years, dismiss the charges for their inadequacy. Accused persons can thus spend great lengths of time in prison even where the government has no case.

¶11. (SBU) There are other abrogations of judicial authority. For example, the newly passed media law purportedly devolves the authority to rule on the legal matters related to the law

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to the ombudsman and makes defamation against government officials prosecutable as a matter of state, with the truth of the facts underlying any defamatory statement no defense (thus leaving little role for courts aside from sentencing). Likewise, one contact told us that under the new banking law, banks can foreclose on property without a court order, and the law is silent on whether appeals can be made to the courts. "We have," the EBA members said, "separation of function, not separation of power." Moreover, certain court actions, coincidentally or not, echo the government's recent efforts to chill and diminish civil society. On August 4, the Federal High Court detained Mesfin Negash, the editor of a popular local paper, for "contempt of court" for simply printing an exact quote from a defense lawyer in the Teddy Afro trial, in which the lawyer threatened to sue the presiding judge for bias (septel). In addition, an EBA member also noted that in politically sensitive cases, the ruling party works behind the scenes to ensure presiding judges understand the party's position and rule accordingly. While such allegations are difficult to prove, the recent release of Assefa Abraha, the brother of Seeye Abraha, patently a political decision (and following senior level United States-Ethiopia bilateral consultations), does indicate the ruling party retains considerable influence on the judicial system (reftel). NOTE: The Ethiopian judges we spoke with were careful to distinguish between their role in sentencing and the penal system's role in enforcing sentences, to argue that pardons or commutations of sentences did not reflect government influence on the judiciary itself.

END NOTE.

Corruption

¶12. (SBU) Judicial practitioners interviewed said that there appears to be little egregious corruption in the court system. One Federal High Court judge said, "We hear some complaints of some corruption, but they are hard to substantiate. In any event, such complaints are rare and at worst reflect petty corruption." The Ministry of Justice (MOJ) has brought cases against 17 judges over the past year, and all but two have been dismissed. MOJ has no direct role in the administration of the courts. A fifteen member judicial commission, composed of members from two judges each from the three federal courts and three Ministers of Parliament (MPs), is charged with discipline and also deals with judges' nominations, remuneration and benefits. The judicial commission reports to Parliament once per year.

Comment

¶13. (SBU) Overall, the judicial system is in transition, but making discernible progress in judicial administration and information technology, with outside help. Ethiopia's legal practitioners underscore that Ethiopia is committed to professionalizing the judiciary and the United States Mission will continue to work with the American Bar Association, Ethiopia's law schools and implementing partners toward that end. Even with efficiency gains, however, as in most developing countries concerns remain about judicial independence and the Embassy will continue to urge the government to accept our technical assistance designed to boost judicial independence and capabilities. End Comment.
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